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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 SONY CORPORATION,

15 Plaintiff,

16 v.

17 VIZIO, INC.,

18 Defendant.
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Case No. CV-08-01135-RGK(FMOx)

**SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
JOINT STIPULATION
REGARDING VIZIO, INC.'S
MOTION TO COMPEL EXPERT
REPORTS AND DEPOSITIONS,
AND TO COMPEL DEPOSITIONS
OF SONY WITNESSES IN THE
UNITED STATES**

**MAGISTRATE JUDGE: HON.
FERNANDO M. OLGUIN**

**HEARING: 10:00 A.M. ON
SEPTEMBER 2, 2009, AT 312
NORTH SPRING STREET, LOS
ANGELES, CALIFORNIA**

**DISCOVERY CUT-OFF DATE:
NOVEMBER 1, 2009**

**PRETRIAL CONFERENCE DATE:
JANUARY 10, 2010**

TRIAL DATE: JANUARY 26, 2010

1 **I. INTRODUCTION**

2 Sony filed suit in this District for infringement of its patents and then
3 persuaded the New Jersey court to transfer Vizio's action on those patents here,
4 arguing that this forum was more convenient for its witnesses, most of whom reside
5 in Japan. As a result, Sony is estopped from now arguing that it is inconvenient to
6 bring witnesses here for depositions. Neither has Sony offered any evidence of
7 good cause for not producing its Japanese witnesses here, nor sought a protective
8 order. Accordingly, with respect to the matter of deposition locations, the Court
9 should order as follows:

10 A. Sony must bring its Rule 30(b)(6) deponents to the Central District for
11 their depositions. Despite arguing against this previously, it appears that Sony no
12 longer debates this point;

13 B. Sony must also bring at least the lead inventor of each asserted patent to
14 the Central District to serve as a Rule 30(b)(6) deponent on the patent issues of
15 inventorship, conception and reduction to practice. As Sony admits, no other
16 witnesses are capable of providing this crucial testimony; and

17 C. Consistent with its successful argument in the New Jersey court that it
18 would be more convenient to litigate this case in the Central District, Sony must
19 bring its Rule 30(b)(1) deponents who reside in Japan to the Central District for
20 their depositions.

21 Nor should Sony be heard to complain about Vizio's compliance with the
22 Local Rules. Both sides have staked out their positions on this dispute for quite
23 some time: the parties have held meet and confers, exchanged correspondence and
24 the issue was raised in the Joint Rule 26(f) Report. Sony has steadfastly refused to
25 produce any Japanese witnesses here during these months. Only when confronted
26 with the Court's intervention has Sony changed its tune and offered an eleventh-
27 hour measure that falls well short of its obligations.

28 With respect to expert discovery, because Sony has asserted ten patents

1 covering disparate areas of television technology, the parties would benefit from an
2 orderly exchange of expert reports and the opportunity for expert depositions to
3 prepare for trial. Relying only on the exchange of narrative summaries at the pre-
4 trial hearing will lead to surprise, wasted examination and confusion at trial. Expert
5 reports should instead be prepared and exchanged on the schedule set forth in
6 Vizio's proposed order.

7 **II. ARGUMENT**

8 **A. THE COURT SHOULD GRANT VIZIO'S MOTION** 9 **CONCERNING DEPOSITIONS IN THE UNITED STATES**

10 **1. Sony Must Produce At Least The Lead Inventors In The** 11 **U.S. For Sony's 30(b)(6) Deposition**

12 Sony now concedes that it will produce its 30(b)(6) witnesses for deposition
13 in the U.S. With respect to the Rule 30(b)(6) topics of inventorship, conception,
14 and reduction to practice, this concession is a hollow one because Sony refuses to
15 produce its knowledgeable witnesses (*i.e.*, the inventors, most of whom reside in
16 Japan) here.

17 Vizio is entitled to depose the individuals most knowledgeable regarding
18 inventorship, conception and reduction to practice of the alleged inventions of the
19 asserted patents. *See Dey L.P. v. Eon Labs., Inc.*, No. SACV 04-00243 CJC
20 (FMOx), 2005 WL 3578120, at *6 (C.D. Cal. Dec. 22, 2005) (finding unreasonable
21 patentee's failure to provide its 30(b)(6) witness, a named inventor, with
22 information regarding inventorship or, alternatively, to designate additional
23 30(b)(6) witness with sufficient knowledge). These are crucial issues in every
24 patent infringement case. Sony's inventors are unquestionably the most
25 knowledgeable on these topics. *See, e.g., id.; Teleshuttle Techs. LLC v. Microsoft*
26 *Corp.*, No. C04-02927 JW(HRL), 2005 WL 3259992, at *1 (N.D. Cal. Nov. 29,
27 2005); *Mosaid Techs. Inc. v. Samsung Elecs. Co., Ltd.*, 362 F. Supp. 2d 526, 539
28 (D.N.J. 2005).

Indeed, Sony has admitted in correspondence that only the inventors can

1 provide adequate testimony for 30(b)(6) topics regarding the asserted patents,
2 including inventorship, conception and reduction to practice:

3 Vizio cannot expect a Sony attorney to marshal all of the
4 facts of this case from witnesses abroad, question each of
5 the inventors, marketing personnel, patent prosecution
6 attorneys, *etc.*, collect and synthesize all of the
information in their possession; then, in turn, feed it back
to Vizio in the U.S. in response to deposition questions.

7 (Joint Stip. Exh. 8 at 4.) Having conceded that the task is impossible, Sony cannot
8 now insist that Vizio accept its proposal to have some other witness testify
9 regarding the asserted patents on issues such as inventorship, conception and
10 reduction to practice. Sony should produce its inventors because they are the
11 witnesses who have the relevant information, thereby reducing the chance that time
12 will be wasted when other 30(b)(6) witnesses have to be produced later who can
13 answer Vizio's questions on these topics. *See Dey*, 2005 WL 3578120, at *6.

14 **2. Sony's Other Fact Witnesses Must Appear Here Because It**
15 **Filed Here And Successfully Argued For Transfer Here**

16 Sony erroneously argues that "[t]he presumption is that a deponent will be
17 deposed at his residence." (Joint Stip. at 24.) That is not the case for plaintiffs'
18 witnesses, *HTC Corp. v. Tech. Props.*, No. C08-00882 JF (HRL) 2008 WL
19 5244905, at *2 (N.D. Cal. Dec. 16, 2008), and Sony admitted as much when it
20 acknowledged that the plaintiff bears the burden to show good cause why its
21 witnesses should not appear for deposition in its chosen venue. (Joint Stip. at 25.)

22 Although Sony acknowledges its burden,¹ it does not make the showing that

23 ¹ Contrary to Sony's recount, the *HTC* court certainly did "issue an open-
24 ended, blanket order requiring all foreign witnesses to appear in the United States."
25 (Joint Stip. at 25.) All depositions of the Taiwanese plaintiff's witnesses—
26 corporate and individual alike—were to take place in the U.S., "without prejudice
27 to any party's ability to move for an exception for any individual deposition"
28 2008 WL 5244905, at *2. Nor does *Cadent Ltd. v. 3M UniTek Corp.*, 232 F.R.D.
625 (C.D. Cal. 2005) support Sony's position that depositions should take place in
Japan—in fact, *Cadent* held Israeli witnesses should be deposed in this District.
And, Sony also acknowledges that *United States v. Rock Springs Vista Dev.*, 185
F.R.D. 603, 604 (D. Nev. 1999), places the burden on "plaintiff [to] show good
cause for not being required to come to the district where the action is pending."

1 courts require of plaintiffs in these instances. Sony does not explain any
2 “individual circumstance” for any of its witnesses and has made no effort to move
3 for a protective order or to show good cause why its witnesses should not appear in
4 this District, other than vague notions of “cost and inconvenience to those witnesses
5 and to Sony.” (Joint Stip. at 26-28.) Those arguments must fail because Sony not
6 only chose this venue, but convinced the New Jersey court to grant its transfer
7 motion on convenience grounds. *HTC*, 2008 WL 5244905, at *2 (“[W]here
8 plaintiffs not only chose this forum, but fought for it because it was more
9 convenient for its [sic] witnesses to travel to [from Taiwan], the court gives little
10 weight to plaintiffs’ complaints that the forum is inconvenient and costly.”) Indeed,
11 Sony is estopped from arguing that this is not a convenient forum for its Japanese
12 witnesses. *See Ins. Co. of N. Am. v. Ozean/Stinnes-Linien*, 367 F.2d 224, 227 (5th
13 Cir. 1966).

14 **3. Sony’s Claims Of A Failure To Meet And Confer Are** 15 **Unfounded**

16 Sony does not dispute that the parties discussed depositions of Sony
17 witnesses in the U.S. in February and March 2009, prior to filing the parties’ Joint
18 Rule 26(f) Report, which framed the dispute. (Joint Stip. at 11-12.) Nor does Sony
19 dispute that the parties have exchanged numerous letters regarding this issue. (*Id.*)
20 Sony admitted that the parties had a meet and confer about this issue. (*Id.* at 12.)
21 In short, Sony has been well aware of Vizio’s position for some time, and Sony has
22 refused at every turn to produce its witnesses for deposition in the U.S.

23 Sony’s last letter to Vizio on this issue conclusively established that the
24 parties are at an impasse. On July 29, 2009, Sony wrote that its position was
25 “crystal clear” and had been for four months. (Joint Stip. Exh. 8 at 1.) Sony
26 insisted Vizio was “oblig[ed] to take the steps necessary to arrange the depositions
27 of witnesses who reside in Japan.” (*Id.* at 2.) Sony further argued that Vizio “may
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1 not now unilaterally require the depositions to take place in the United States.”

2 (*Id.*)

3 Sony’s attempts to argue a failure to meet and confer are simply an after-the-
4 fact effort to avoid or delay the Court’s intervention in this dispute, which has been
5 deadlocked since February 2009. The Court should reject them.

6 **B. THE COURT SHOULD GRANT VIZIO’S MOTION**
7 **CONCERNING EXPERT REPORTS AND DEPOSITIONS**

8 Sony’s position—that the Court adopted Sony’s proposal for expert
9 discovery and rejected Vizio’s—has no basis in the record. Sony confused the
10 Court’s standard final pre-trial expert provisions in its April 6, 2009 Order as
11 reflecting the Court’s final position on the disputed issue of expert reports and
12 discovery. (Joint Stip. at 16-17.)² The Court did not adopt either party’s proposal
13 on this issue. The Court expected “the attorneys on both sides to be able to resolve
14 [disputed issues in the Joint Rule 26(f) Report] as much as [they] can by
15 [them]selves.” (Supp. Exh. 1, at 10:13-15; Supp. Corr. Decl. ¶5.) The Court
16 advised: “Anything you can’t agree on, bring to me by way of written motion.”
17 (*Id.* at 10:18-20.) That is what Vizio did. Other than argue that the issue has
18 already been decided, Sony does not dispute that Vizio’s proposed schedule will
19 facilitate a more efficient and less confusing trial on the ten asserted patents.

20 **III. CONCLUSION**

21 For all of the foregoing reasons, the Court should grant Vizio’s motion.

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25 ² The cases Sony cited involved far fewer than the ten asserted patents in this
26 case. *See Arko Dev. Ltd. v. Little Kids, Inc.*, No. 2:08-cv-04048-RGK-AGR, Dkt.
27 #1 (C.D. Cal.) (three patents); *Barracuda Networks Inc. v. Trend Micro Inc.*, No.
28 2:08-cv-04369-RGK-CW, Dkt. #1 (C.D. Cal.) (same); *KYE Sys. Am. Corp. v.*
RadioShack Corp., No. 2:08-cv-05579-RGK-FFM, Dkt. #1 (C.D. Cal.) (one). *Katz*
Interactive, in which the Court ordered expert discovery similar to what Vizio
requested, is more comparable to this case, given the number of asserted patents.

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Dated: August 19, 2009

JONES DAY

By: /s/ Steven J. Corr
Steven J. Corr

Attorneys for Defendant Vizio, Inc.

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I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3161 Michelson Drive, Suite 800, Irvine, California 92612. On August 19, 2009, I served a copy of the within document(s):

- by transmitting via e-mail or electronic transmission the document(s) listed above.

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1 On August 19, 2009, I also served a courtesy copy, pursuant to the agreement
2 between the parties, by e-mail to opposing counsel at:

3 sony-vizio@quinnemanuel.com

4 I declare that I am employed in the office of a member of the bar of this court
5 at whose direction the service was made.

6 Executed on August 19, 2009, at Irvine, California.

7 
8 Maria Castellanos